

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

Estate of MARY ELLEN COUFAL, Deceased.	
_____ DWAYNE AARON COUFAL, as Trustee, etc., Petitioner and Appellant, v. JOE BOB KIRK, Objector and Respondent.	A135928 (Alameda County Super. Ct. No. VP06286567)
_____ DWAYNE AARON COUFAL, as Trustee, etc., Petitioner and Appellant, v. JOE BOB KIRK et al., Defendants and Respondents.	(Alameda County Super. Ct. No. VP06293500)

Appellant Dwayne Aaron Coufal argues the trial court erred in confirming an arbitration award rendered in connection with a dispute over the implementation of a settlement agreement. Because appellant has failed to provide an adequate appellate record from which we can evaluate his arguments for error, we affirm the judgment.

I. BACKGROUND

The appellate record in this matter consists of a series of 14 documents, largely correspondence, characterized by appellant in the notice designating the appellate record (notice) as a “settled statement.” Although appellant indicated in the notice that an “agreed statement” had been included, there is no agreed statement. Nor does the record include any file-stamped pleadings from the trial court. Because there is neither an agreed statement nor a reporter’s transcript of the proceedings below, we have no record of the trial and nothing to document the admission into evidence of the documents submitted by appellant as a an appellate record. In brief, there is no usable appellate record.

The following account of the background of the appeal is based, in part, on statements in appellant’s opening brief and in part on the unauthenticated documents submitted as an appellate record. We present this only for the purpose of explanation, since we cannot rely in deciding an appeal on matters that are not supported by properly admitted evidentiary materials in the appellate record.

On October 7, 2010, arbitrator William J. Petzel rendered an “Order After Binding Arbitration” (award) in this matter, a copy of which is in the record. According to the award, the arbitration concerned a written settlement agreement, dated June 18, 2009, a copy of which was attached to the award. The parties to the settlement agreement were appellant and respondents Joe Bob Kirk, Paul Coufal, and Darrel Coufal. A recital in the settlement agreement characterizes the intent of the parties as “to settle their dispute and dismiss the above litigation,” which is identified as the two superior court proceedings that are the subject of this appeal. After disputes arose over implementation of the settlement agreement, the parties agreed to binding arbitration. In the award, Petzel made findings with respect to a variety of issues and ordered the parties to take various actions.

According to appellant’s brief, respondents filed a petition to confirm the arbitration order on November 30, 2010, and he filed a request to modify or vacate the arbitrator’s ruling on March 17, 2011. The record does not contain a copy of the first document. There is a copy of appellant’s request to modify or vacate the award, but it

bears no file stamp. There is no transcript or other documentation of a trial, but appellant's notice of appeal attaches a copy of a "Final Statement of Decision and Judgment" (judgment), signed by Marshall Whitley, judge of the superior court, which states that trial occurred over the course of four days in January 2012. The judgment granted the petition to confirm the award and denied appellant's request to modify or vacate on both procedural and substantive grounds. In denying appellant's request, the court explained that Code of Civil Procedure section 1290.6 requires a response to a petition to confirm an arbitration award to be filed no later than 30 days after service of the petition, and Code of Civil Procedure section 1288.2 requires a petition to vacate or correct an arbitration award to be filed no later than 100 days after service of the award. Appellant's petition satisfied neither requirement. In addition, the trial court found none of the circumstances that permit a trial court to vacate or correct an arbitration award under Code of Civil Procedure sections 1286.2 and 1286.6.

II. DISCUSSION

Appellant raises 10 alleged errors in the arbitration award and 2 errors in the judgment. With respect to the judgment, appellant contends the trial court erred in finding his request untimely because three of the five beneficiaries had not been served until after his request was filed and respondents failed to respond to the request.

"It is well settled . . . that a party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) When no adequate record is provided, "the judgment must be affirmed. [Citation.] This is so because ' "[a] judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent. . . .' [Citation.]" [Citations.]' [Citation.] 'The absence of a record concerning what actually occurred at the trial precludes a determination that the trial court [erred].' " (*Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.)

As discussed above, the record here contains no file-stamped pleadings, and the purported evidentiary materials are not authenticated. In particular, we have no records that would permit us to determine whether, as appellant contends, three of the five

beneficiaries were not served until after his request was filed and respondents failed to respond to the request. Further, his claims of error in the arbitration award are all based on the arbitrator's findings about the dealings between the parties. Because there is no testimony or authenticated documentary evidence in the record concerning these matters, the record is effectively silent as to the parties' dealings. Because the record provides no basis on which we can find the trial court's judgment to be in error, it must be affirmed.

Although we affirm the judgment on the basis of an inadequate appellate record, we note that the grounds for vacating or correcting an arbitration award are very narrow. (*Shahinian v. Cedars-Sinai Medical Center* (2011) 194 Cal.App.4th 987, 999–1000.) “Only limited judicial review is available; courts may not review the merits of the controversy, the validity of the arbitrator's reasoning, or the sufficiency of the evidence supporting the award. [Citation.] Thus, with ‘narrow exceptions,’ an arbitrator's decision is not reviewable for errors of fact or law.” (*Ibid.*; see also *Oxford Health Plans LLC v. Sutter* (2013) ___ U.S. ___ [133 S.Ct. 2064, 2068, 186 L.Ed.2d 113, 118–119].) The type of factual errors claimed by appellant in contesting the award are simply not cognizable in a proceeding to vacate or correct an award. Even if appellant had provided an adequate appellate record from which we could evaluate these arguments, they appear to be very unlikely to have succeeded.

III. DISPOSITION

The judgment of the trial court is affirmed.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.